

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1775 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

VINODBHAI BHIMJIBHAI PATEL

Versus

COMMISSIONER OF POLICE SURAT CITY.

Appearance:

MS DR KACHHAVAL for with
MR KAMLESH KACHHAVAL for Petitioner No. 1
MR SAMIR DAVE APP for Respondents No. 1 to 3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 26/03/2002

ORAL JUDGEMENT

1. The present petition is filed under Article 226 of the Constitution of India.
2. The present petition arises from the detention

order dated 16-8-2001 which has been passed by the Police Commissioner, Surat City, Surat and he was actually detained on 24-8-2001 with a view to prevent him from acting in any manner prejudicial to the maintenance of public order in the area of Surat City in exercise of the power conferred under Sub-Section 1 of Section 3 of the Gujarat Prevention of antisocial Activities Act, 1985 (hereinafter referred to as the "Act").

3. It is the say of the petitioner that he was served with the grounds of detention dated 16-8-2000, the copy of which has been annexed at Annexure-B to this petition. It is further say of the petitioner that the ground of his detention is that he has been involved in one criminal case registered against him u/s 66 (1)(B), 65(E), A, 81, 97,98, 116 (B) of the Bombay Prohibition Act registered with Kapadra Police Station of Surat City, on the basis of the allegations that he sells and supplies and possesses illicit foreign liquor in the area of Kapadra Police Station. It is further alleged that he used to give to the persons of that area showing deadly weapons who do not cooperate in his antisocial activities of selling illicit foreign liquor and due to these kind of activities fear and terror is prevailing in the area and the petitioner has become an obstruction to the maintenance of public order and the ordinary provisions of Law are found insufficient to curb his antisocial activities. Therefore, police has resorted to the provisions of the Act and passed above referred order against the petitioner against which the present Special Civil Application has been filed by the petitioner.

4. I have heard learned counsel for the petitioner and learned A.P.P. Mr.. Samir Dave for the respondents.

5. Learned counsel for the petitioner has raised various ground in her defence. But at the time of arguments, she has stated that her only ground is that there is delay in passing the impugned order and that delay has not been satisfactorily explained by the authority concerned and therefore the impugned order is vitiated. The learned counsel for the petitioner has not put any other ground into motion.

6. Learned counsel for the petitioner has drawn the attention of this Court that the date of passing the impugned order is 16-8-2001 for which the authority has only relied on solitary offence which has been registered with Kapadra Police Station of Surat City on 20-6-2001 and also relied on the statements of two witnesses whose names have not been disclosed. According to her, both

the witnesses have not narrated the incident of 26-4-2001 and 14-4-2001 and the impugned order has been passed on 16-8-2001 and therefore there is delay of more than four months in passing the impugned order for which learned counsel for the petitioner has relied on the decision of the Hon'ble Supreme Court in the case of Anand Prakash V. The State of U.P. and others, reported in AIR 1990 SC 516, wherein it has been held as under :

"The theft of wire was on 14-2-1989 and the F.I.R. was registered on 15-2-1989. On the day itself as seen from the record Jagdish, Santosh and Munshi Sharma were shown as accused on the basis of some information. The house of Jagdish was raided on 3-3-1989 and on the same day the factory of the detenu was raided and 20 k.g. of melted wire was recovered from Munshi Sharma but no action was taken till 2-5-1989 against the detenu. On being arrested on 2-5-1989 the detenu moved a bail application and the detention order itself was made on 3-5-1989. Though bail was granted, in view of the detention order he could not be released from jail. In spite of the fact that the recovery statement itself was made as early as on 3-3-1989 no action was taken till 3-5-1989. Nothing more as stated in the detention order. The delay has also not been satisfactorily explained in the counter statement of the respondents. The ground instance, could not (be) a proximate cause for a sudden decision to take action under the National Security Act and this also vitiates the order."

7. I have heard the learned counsel for the petitioner and learned A.P.P. Mr. Samir Dave for the respondents.

8. Learned A.P.P. Mr. Dave is not in a position to explain the delay caused in passing the impugned order of detention which occurred for the period of more than two months. Even no explanation has been put forward by the authority by satisfying the conscience of the Court. The say of the petitioner is fully covered by the above referred decision of the Hon'ble Supreme Court.

9. In view of the above, this petition is allowed and the impugned detention order dated 16-8-2001 passed by the respondent no. 1 - The Commissioner of Police Surat City, Surat Annexure-A is hereby quashed and set aside. The petitioner - detenu Vinodbhai Bhimjibhai Patel is ordered to be released forthwith, if he is not

required in any other case. Rule is made absolute, with
no order as to costs.

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/JVSatwara/